



Ethics News

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March 2004



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Indiana State Ethics

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2003



History of the Indiana State Ethics Commission

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The people's good is the highest law.

—Cicero (106 BC - 43 BC), De Legibus

Upcoming Classes

2004 Ethics Classes

Ethics Orientation

April 13, June 15,
August 24, October 19, December 7
(10:00 - 11:00 a.m.)

Supervisors & Managers

April 14, June 16,
August 25, October 20, December 8
(10:00-12:00 p.m.)

Classes are in the State Conference or
Training Center, Indiana
Government Center South, 402 W.
Washington St., Indianapolis, IN.
Please check directory on day of class
for room number.

To register, call (317) 232-3850 or visit our
Web site at www.ethics.IN.gov

Commission meetings are open to the public and held the
second Thursday of the month. Normal starting time is 10:00 a.m.

Recent Enforcement Proceedings

The State Ethics Commission approved the following report regarding a former state employee who had waived her right to a public hearing, and entered into an agreed settlement.

Case #03-C-9

On March 11, 2004, the Ethics Commission, by majority vote, adopted the following report.

A state employee was found in violation of [40 IAC 2-1-9\(f\) and \(g\)](#) when she used her state agency's toll-free telephone line for personal use. Her calls were made during normal state business hours and resulted in a total cost of \$52.84 over a five-month period.

The same employee, in 2003, had been found guilty of selling Avon products on state time and state property. The inappropriate telephonic activity occurred concurrent with and subsequent to this ethics violation for which the employee was disciplined.

As outlined in the agreed settlement, the employee agreed to refrain from using the agency's toll-free line for personal business and to refrain from engaging in non-state business while on duty. She further agreed to pay a \$200.00 fine and to surrender two vacation days to the state in lieu of a suspension.

Advisory Opinion

No. 04-I-2 Nepotism Statute March 11, 2004

A state employee has been employed at the Indiana Professional Licensing Agency (PLA) for approximately ten years. She worked her way up the ranks from a clerical position to director of finance. Because of a modified merger with the Health Professions Bureau (HPB) that occurred within the last year, she has assumed a different, but related role with the HPB. Technically, however, she is still employed by PLA because the PLA provides the funding for her salary and the objective of the modified merger is to combine the two agencies into one.

On December 24, 2003, the state employee married the son of the director of the PLA. The question before the Commission is, under the Indiana Nepotism statute, [4-15-7-1](#), can the state employee seek promotion within PLA?

The commissioners found that it would not be a violation of the nepotism law for the state employee to receive a promotion within the Professional Licensing Agency. The commissioners noted that, if promoted, the state employee would not be directly supervised by her father-in-law. They did, however, ask the director of PLA to recuse himself from having any input into the promotional process when his daughter-in-law was involved.

Staff Advice

This article briefly reviews questions recently addressed by the Ethics Commission staff. The advice is not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your [agency Ethics Officer](#) or the State Ethics Commission.

NOTE: *Please be advised that the opinions in these answers merely interpret and apply the State Ethics Commission's laws, regulations, and policies. The fact scenarios presented in these questions could possibly violate other agency laws, regulations, rules, or policies.*

Q. A member of the executive board of a state agency has the opportunity to enter into a contract with that agency to conduct a study on osteoporosis. The board member wants to know if it will be a conflict of interest to enter into the contract.

A. The Ethics Commission's statutes/rules regarding conflict of interest do not apply to special state appointees. However, there is a **criminal** conflict of interest statute that *does* apply to the board member's fact scenario ([IC 35-44-1-3](#)).

Although the board member falls under the definition of *public servant*, contained in [IC 35-41-1-24](#), and therefore is subject to the restrictions of the criminal conflict of interest statute, the board member can nevertheless enter into a contract with the state agency as long as the board member makes a disclosure under [IC 35-44-1-3\(d\)](#). A copy of the necessary form for this disclosure can be found on the Ethics Commission's Web site under the menu heading *Forms*.

Q. What are Indiana's ethics rules regarding lending corporate planes to state officers such as the Governor, the Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, and the Superintendent of Public Instruction?

A. The officials listed above are not subject to the Indiana state employee gift rule, but they do have to disclose rides on corporate planes on their annual financial disclosure documents.

Q. Can a state employee run for a school board of education?

A. This is something that **is** permissible for an employee to do under our state's ethics laws and rules. However, if an employee works on any federally funded program, and wants to run for elected office, that employee should seek an advisory opinion from the Office of Special Counsel at (800) 854-2824 (or see www.osc.gov). Such employee is subject to the Hatch Act.

Q. A state agency has a director that supervises three deputy directors. The deputy directors are over supervisors, who are in charge of the rest of the employees. One of the employees in the agency is the aunt of one of the agency's deputy directors. Is this against the nepotism law?

A. Since the niece is not directly supervising her aunt, there is no violation of the nepotism law. There is one layer of management in between them. However, if the niece were the director of the agency, it would pose a problem for the aunt if she had been employed by the agency for less than 12 months. But, this is not the case, so there is no nepotism problem.

What Would You Do?

Test your knowledge of the ethics rules.

1. You are supervising a contract awarded by your agency. The company awarded the contract has agreed to install security systems for your agency's computers within three weeks. Your job is to see that the terms of the contract are carried out. Close to the end of the project, a representative of the company approaches you with a job offer. What would you do?
 - A. Tell the representative that as soon as the terms of the contract are completed, you will go to work for his company.
 - B. Ask your supervisor to remove you from overseeing the contract so you can negotiate with the company representative.
 - C. Ask the representative to give you something in writing.

2. You are involved in a political fund-raiser and want to solicit as many people as you can. What would you do?
 - A. Ask only employees you don't supervise and persons not having a business relationship with your agency (off state time).
 - B. Ask co-workers on state time if they're not busy.
 - C. Put a flyer on the employee bulletin board inviting all employees who might be interested.

3. There is no action you can take toward one of your agency's vendors. The vendor wants to give you a one day ticket valued at \$40.00 to King's Island. What would you do?
 - A. Accept the ticket, since you have no discretion over the vendor.
 - B. Seek written approval from your Ethics Officer.
 - C. Ask the vendor for another ticket, since you don't want to go by yourself.

4. Your spouse is part owner of a small construction company that falls under your list of companies to inspect. What would you do?
 - A. Ask your supervisor to be screened from inspecting your spouse's company.
 - B. Inspect the company this time, but not in the future.
 - C. Look for another job.

5. You want to volunteer for a non-profit organization that receives grants from your agency. What would you do?
 - A. Nothing, since it's a non-paid position.
 - B. Go ahead and volunteer and if anything comes up, notify your supervisor.
 - C. Seek advice from the Ethics Commission or your Ethics Officer.

Answers on following page

Answers to Quiz

1. B is correct.

An employee is prohibited from participating in a decision of any kind concerning a person with whom he or she is negotiating for employment. Decisions to which the prohibition applies include, among other things, selecting a particular vendor for a contract or service, awarding contracts, overseeing the performance of work by a contractor, and approving or signing off on licenses or permits, as well as participating as a subordinate in these.

Negotiating for employment encompasses bargaining for salary and hours, as well as preliminary efforts to obtain employment, such as sending a resume or filing an application. Having an interview and discussing possible terms of employment qualifies as negotiations even if the employee does not receive a job offer as a result of the interview. However, rejecting an unsolicited employment overture is not considered negotiating for employment.

2. A is correct.

You may not solicit (on or off state time) contributions from employees you supervise or persons you know to have a business relationship with your agency.

3. B is correct.

Even though you have no discretion over the vendor, the vendor does have a business relationship with your agency. Therefore, because the gift exceeds \$25, you need written approval from your ethics officer to accept the gift. The gift rule states, "Without the written approval of the employee's appointing authority or the state officer, an employee shall not accept for personal use any gifts, favors, services, entertainment, food, or drink valued at a total of more than twenty-five dollars (\$25) in a calendar year from a person or business that has a business relationship with the employee's agency."

4. A is correct.

As a state employee or officer, you may not participate in any decision of any kind in which you, your spouse, or minor child has a financial interest.

5. C is correct.

The moonlighting rule applies to both paid and unpaid activities. If the volunteer position would (1) pose a likelihood of a conflict of interest; (2) impair your independence of judgment; or (3) create an incentive for you to reveal confidential information, then you would be prohibited from taking the volunteer position as you would in a paid position.

Have any Questions of your own?

Do not hesitate to contact the Ethics Commission at
ethics@ethics.state.in.us

